

SENATE BILL REPORT

SB 5943

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2009
Ways & Means, March 2, 2009

Title: An act relating to performance-based contracts for the provision of child welfare services.

Brief Description: Requiring performance-based contracts for the provision of child welfare services.

Sponsors: Senators Hargrove, Stevens, Fairley, Regala, McAuliffe, Jarrett, Tom, Brandland, Kauffman, Kline, Delvin and Shin.

Brief History:

Committee Activity: Human Services & Corrections: 2/13/09, 2/23/09 [DPS].
Ways & Means: 3/02/09 [DP2S, DNP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5943 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5943 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hobbs, Kline, Murray, Parlette, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Fraser, Vice Chair, Capital Budget Chair; Kohl-Welles, McDermott and Schoesler.

Staff: Michael Bezanson (786-7449)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The Children's Administration (CA) within the Department of Social and Health Services (DSHS) provides child welfare services (CWS) to children in out-of-home care and their families. CWS includes out-of-home care, case management, and adoption services. CWS also includes the legal case management of the case. Historically, about 30 percent of CWS has been provided by child-placing agencies with whom CA contracts. The contracts, however, are not performance-based.

CA contracts with many private agencies across the state to provide a host of services to its clients. There are currently about 1,000 contracts with different providers. The contracts are managed at both the regional and headquarters level.

Summary of Bill (Recommended Second Substitute): Beginning on December 1, 2010, CA must begin converting its existing contracts with child-placing agencies into performance-based contracts to provide CWS. The Attorney General's Office must provide legal representation to the private agencies in the dependency cases. The provisions in the Civil Service Act regarding the specific requirements around state employees bidding to provide services as private entities do not apply.

Beginning on July 1, 2014, all CWS for children for whom CA has legal custody must be provided by private agencies (referred to in the bill as supervising agencies) with whom CA has entered into performance-based contracts. Supervising agencies are defined as agencies licensed by DSHS or an Indian tribe that has entered into a performance-based contract with DSHS to provide child welfare services. The provision of child protective services remains the responsibility of CA. After July 1, 2014, CA may not directly provide CWS except in an emergency or as a provider of last resort. In this situation, DSHS is also considered a supervising agency. CA is considered a "provider of last resort" when it is unable to contract with a private agency to provide CWS in a particular geographic area or the contract with the private agency is terminated by CA or the contractor. After July 1, 2014, CA is responsible only for monitoring the quality of services for which it has contracted and ensuring that those services meet federal and state requirements, including the Indian Child Welfare Act. DSHS must give a preference to private non-profit agencies when entering into performance-based contracts. This does apply to Indian tribes.

As child welfare caseworkers and other staff decline as a result of voluntary departure, CA is not to fill those positions, except in extreme emergencies, but rather is to increase its referrals to supervising agencies on a pro rata or greater basis.

The performance-based contracts used by CA must be structured to hold the private agencies accountable for achieving the following goals in order of importance: child safety; reunification of the child with the parents; and child permanency with a preference for reunification.

The Child Welfare Transformation Committee (Committee) is established. The members of the Committee are as follows:

- four private agencies, two of which are headquartered in western Washington and two of which are headquartered in eastern Washington. Two of the agencies must have an annual budget of over 1 million state-contracted dollars and two of the agencies must have an annual budget of less than 1 million state-contracted dollars;

- the Assistant Secretary of the Children's Administration;
- two CA regional administrators, one from eastern Washington and one from western Washington;
- the CA Division of Licensed Resources administrator;
- two nationally recognized experts in performance-based contracting;
- the Attorney General (AG), or the AG's designee;
- a representative of the collective bargaining unit that represents the largest number of CA employees;
- a representative of the Office of the Family and Children's Ombudsman;
- four representatives from federally recognized Indian Tribes, two of which must operate child welfare programs;
- two present or former superior court judges with significant experience in dependency matters, selected by the Superior Court Judge's Association; and
- one representatives of Partners for Our Children (POC).

The President of the Senate and the Speaker of the House of Representatives will jointly appoint the four private agencies and the two nationally-recognized performance-based contracting experts.

The POC representatives will convene the initial meeting no later than June 15, 2009. The chair or co-chairs of the Committee are to be selected from among the Committee's membership by majority vote of those present at the initial meeting of the Committee. The Committee may establish advisory committees as necessary. Staff support for the Committee will be provided jointly by POC and legislative staff. The Committee is subject to the Open Public Meetings Act and the Ethics in Public Service statutes. Administrative costs for the Committee will be paid from private funds.

The Committee is to develop a transition plan that contains recommendations to the Legislature for the provision of CWS by supervising agencies. The plan must include the following:

- a model or framework for performance-based contracts to be used by CA that must include the following:
 1. the target population;
 2. the contract referral and exit criteria;
 3. the CWS to be provided by the contractor;
 4. the roles and responsibilities of public and private agency workers in key case decisions;
 5. contract performance and case outcomes expectations;
 6. the method by which to measure whether the contractor has met the goals in order of importance; and
 7. incentives to meet program goals;
- a method by which CA can substantially reduce the current number of contracts for CWS;
- a method by which clients will access community-based services, how supervising agencies will engage other services or form local service networks, develop subcontracts, etc.;
- contract monitoring and evaluation procedures to ensure children and families are receiving timely and quality services from the supervising agencies;

- a process by which to expand the capacity of private agencies to meet the service needs of children and families in a performance-based contractual arrangement;
- a method by which supervising agencies can expand services in underserved areas of the state;
- appropriate reimbursement levels for supervising agencies;
- a method to enhance existing data systems;
- a financing arrangement that examines different payment methods and ways to reduce contractor's liability;
- a description of how the transition may affect the state's ability to obtain federal funding;
- a description of the costs of the transition; and
- identification of any statutory or regulatory changes needed.

The Committee must also recommend how to implement its plan in stages across the state so that full implementation is accomplished by July 1, 2014.

The Committee must report, in writing, to the Children's Oversight Committee on a quarterly basis starting on June 30, 2009. The Committee must report to the Children's Oversight Committee by June 1, 2010, its recommendation for staged implementation of the act across the state.

The Committee expires on June 30, 2013.

Sections 1 through 6 take effect July 1, 2010, and Section 7 takes effect immediately.

The act is only in effect if funds are specifically appropriated for this purpose.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Requires DSHS to give a preference to private, nonprofit agencies when entering into performance-based contracts. The bill excludes tribes from this new provision.

The act is only in effect if funds are specifically appropriated for this purpose.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended First Substitute):

- The date by which DSHS must fully implement the act is extended to July 1, 2014.
- The definition of "supervising agency" is broadened to ensure that it includes Indian tribes.
- The membership of the committee is altered slightly:
 - The POC membership is reduced from two to one; and
 - The number of tribes participating in the committee is raised from two to four.
- POC must convene the first Committee meeting no later than June 15, 2009.
- Language is added to clarify that the Attorney General's Office provides only legal services in dependency and termination of parental rights matters to the supervising agencies.

- Language is added to clarify that as CWS staff declines as a result of voluntary departures CA is not to fill those positions, except in extreme emergencies, but rather is to increase its referral of cases to supervising agencies on a pro rata or greater basis.
- The expiration date for the committee is changed from July 1, 2011, to July 1, 2013.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: This state needs a more rational division of labor between the public agency and private agencies and this bill offers a vehicle by which to accomplish that. There are currently over 1,000 contracts CA has with private agencies with which CA purchases services and, as a result, there is a fragmentation of services to the clients. Contractors should be held to certain outcomes in the delivery of services and this state needs to tie reimbursement to outcomes. This bill would free up CA to concentrate on Child Protective Services (CPS) and set the standard for investigation and licensing.

This bill is creative and innovative and performance-based contracting is a strong, viable process by which to achieve good outcomes for children and families in this state. The success of performance-based contracts rests on the ability to negotiate between the contractors and the state. Performance-based contracting is a good idea, especially when all involved parties are included in accountability expectations. The committee established in the bill should develop concrete outcomes rather than process indicators.

It is unclear if this bill allows providers to serve children who are not yet state dependents, who are still with CPS, rather than CWS. There is concern about liability issues and it would be helpful to manage the increased level of liability that would seem to occur for the private agencies under this bill. It does not seem like this bill would cost any more than what CA currently pays for CWS. The timelines should be extended and some pilots tried in different parts of the state. There are probably some bugs to be worked out and piloting this in several areas would allow for that. The risk management and legal custody portions of the bill need to be defined.

CON: There is no evidence that moving the provision of CWS to the private sector saves money. Furthermore, the use of performance-based contracts with the private sector does not result in better services. The analysis of successful models in other jurisdictions demonstrates such models included a change in the governance model along with the service delivery model. The public sector could also be successful under a governance model shift and look to successes in the federal Workforce Investment Act as a comparison. This bill does not address the workload problem and social workers have been asking for workload relief for years. This bill will not get services to families because excessive bureaucracies need to be worked on, and this bill does not do that.

Washington Federation of State Employees (WFSE) does not dispute that CA needs improvement and there is no question that through public-private partnerships good outcomes can be achieved. WFSE would like to participate in how the goals of the bill are achieved but mandating that CA enter into contracts for the provision of CWS is not the way to achieve those outcomes. Private agencies make money by keeping their census up and that's what they will do under this bill. Private agencies underbid on contracts now and find out that it costs more than they bid and ratchet the costs up; they will continue to do the same thing under this bill.

State social workers have no reason to see children end up in foster care; their motivations are different than those of private agencies. CA is currently overburdened and Famlink should help with that. Current caseloads are lower than they have ever been and CA is meeting the Braam outcomes – things in CA have improved. This bill will just give state social workers another bill not to follow. The state should concentrate on child abuse prevention which this bill would not do.

OTHER: There are concerns with the scope, timing, responsibility to the court, and funding issues of the bill. A phased approach would be best. Most private agencies of any size are located on the west side of the mountains so it would be hard to expand the bill's concept to the east side of the mountains. There are concerns about performance-based contractors living up to the standards in the contracts. Judges are concerned about ordering something in a case and having the contractor not follow through with the order because it was not in the contract. CA should have been leading this discussion and apologizes for not doing so. CA values its relationships with private providers and welcomes the opportunity to improve those relationships. Public child welfare is a complicated business and a thoughtful design process is the place to begin. The process should not be pushed too quickly because to do so could be harmful to children and their families. There are things to lose if the process is done too quickly and much to gain if it is done correctly and thoughtfully. We are concerned about the cost but excited about the prospect.

This bill was developed without tribal input and the tribes want to be involved in any future bill amendments. The tribes have serious issues with any law that could conflict with the Indian Child Welfare Act (ICWA). The tribes care about this bill because 22 percent of the children in foster care are Native American and yet the Native American population for the state is 2 percent. This bill is not a savings measure. There is concern about section 8 on page ten that seems to exclude tribes from participating as contractors under this bill. While this may not have been intended, it needs to be fixed. It is hard enough to get the state to comply with ICWA; how will the state ensure that its contractors are complying?

Persons Testifying (Human Services & Corrections): PRO: Susan Maney, Children's Home Society; Janet St. Clair, Lutheran Community Services NW; Charles Shelan, Community Youth Services; Mark Courtney, Partners for Our Children.

CON: Ursula Petters, Jeanine Livingston, WFSE; Pat Arrera, citizen.

OTHER: Kathryn Nelson, Pierce County Superior Court Judge; Randy Hart, Interim Assistant Secretary, Children's Administration; Mike Moran, Samish Tribe; Karen Condon,

Colville Tribe; Rebecca Peck, Samish Tribe; Mary Stone-Smith, Catholic Community Services of Western Washington; Geraldine Laemmle, teacher.

Staff Summary of Public Testimony on Substitute Bill (Ways & Means): PRO: This bill establishes a process to require performance-based contracts for the provision of child welfare services and provides a more rational division between the public and private sector. The proposed shift from the public sector to the private sector is something that occurs across the country where child welfare services have long been provided by the private sector. Performance contracting can bring success. Several jurisdictions show significant caseload drops. The substitute bill is encouraging because it provides a longer timeframe. This allows the private sector to grow and gives CA time to increase its experience in performance-based contracting.

This bill will increase accountability. There is no panacea for child welfare service. Performance-based contracting offers an opportunity to increase performance-based outcomes. This is not about which sector can do it better. This bill is about serving children and families in this state. Performance-based contracts are demanding and will take a bit to get up to speed. The timeframe the substitute offers should allow this to happen.

CON: The bill does not work. The bill mandates that DSHS stop filling child welfare vacancies and begin contracting out immediately regardless of where those vacancies are or whether or not there is a qualified contractor. The bill does not discuss what will happen when the contractor fails or when services will be increasingly inconsistent. Section 6 says that the costs will be paid by the private sector which provides the appearance of a potential conflict. Section 45 amends the employees' collective bargaining law. The fiscal note is not completed but it will increase costs. The bill would create contract divisions and increase liability. The bill could put federal dollars at risk because under federal rules legal responsibility for placement and care must remain with the state. The bill would create recessionary costs as hundreds of middle-wage workers are replaced by lower-wage workers who frequently have no benefits. Outcomes will be no better and may be even worse. The case has not been made that the private sector can deliver services any better than public. Several jurisdictions with a privatized system show the same complaints that you see under a public system.

OTHER: The intent of this bill is sound because we can do better. The bill creates a large magnitude of change and needs more consultation with tribes. Indian children are roughly 2 percent of the population but make up 22 percent of the foster care caseload. The substitute allows for contracts with the tribes. However, the bill needs to continue child services to Indian children and their families that honors their federally-protected right; specifically terminating parental rights without discussing with the child's tribe. There needs to be more time to work on this bill. The last time the Legislature looked at CWS it looked at caseload and staffing; it should look at performance.

DSHS has received hundreds of FTEs and billions of dollars but people die and complaints go up. Killing the bill does not solve the problem. The bill needs to address the tribes interest in federal law. Indian tribes ask that you take as long as you can so that tribes can provide constructive feedback.

Persons Testifying (Ways & Means): PRO: Mark Courtney, Partner's For Our Children; Terra Bianchi, Mockingbird Society; Laurie Lippold, Children's Home Society.

CON: Dennis Eagle, Washington Federation of State Employees.

OTHER: Miguel Perez Gibson, Colville Tribes; Mike Moran, Spanish, Hoh, and Umatilla Tribes.